

Elk Township Planning and Zoning Board Meeting

Regular Business Meeting

May 18, 2011

Minutes

Call to Order: The Board Chairman called the meeting to order at 7:30 pm.

Open Public Meeting Act: read by the Board Secretary

Roll Call:

Present: Frank Goss, Phil Barbaro, David McCreery, Chuck Nicholson, Eugene Shoultz, Wayne Swanson, Jeanne White, Nick. Yovnello, Ed Pearson (arrived at 7:35 pm)

Absent: Bill Carter, Bob Clark

Also present were the Board's professionals: Leah Furey Bruder, Planner of Bach Associates, Carl Gaskill, Engineer of Fralinger Engineering and Joan Adams, Solicitor.

➤ **Announcements:**

- Notice to Public and Applicants: Board policy is no new business will commence after 10:30pm and all testimony will stop at 11:00 pm, except for individuals wishing to speak during the general public session.

➤ **Approval of minutes:**

- **April 20, 2011, Regular Business meeting**

Mr. Shoultz moved to approve the minutes of April 20, 2011. Seconded by Mrs. White. With all members in favor, the motion was carried.

➤ **Resolutions:**

Memorialization of Resolution 2011-14 for Jeffery & Janine Rubincam, minor subdivision with variances, was postponed at the request of the applicant's attorney.

➤ **Old Business:** None

➤ **New Business:**

Completeness hearing:

- Harry & Serena Holmes, Minor subdivision with variances, block 56, lot 26.02, Aura Road

Harry Holmes, 461 Whig Lane Road & Serena Holmes, 461 Whig Lane Road were sworn in and the Board Attorney confirmed with the Board Secretary that proper public notice was completed.

Mrs. Bruder referred to her completeness/review letter of April 26, 2011.

The applicant requests waivers from the following submission checklist items:

Item #8 submit copies of all applications and certification of approvals from all outside agencies with jurisdiction.

Gloucester County Report of Action has been provided and the applicant does have to comply with some further requirements of the County. Further if the application is approved, the Gloucester County Department of Health will have to approve the septic application.

Mrs. Bruder recommended for completeness purposes, item #8 be waived but would be a condition of any subdivision approval.

Conditional waiver recommended.

Item #11 - plan to include source & Date of current or recertified survey (within 1 yr). The original survey was done on January 4, 2004.

The applicant confirmed that the conditions have remained the same and the plan represents current conditions. Mrs. Bruder has visited the site and agrees there are no changes.

Waiver is recommended.

Item #36 - provide copy of protective covenants, easements, restrictions & title policy (title provided) A copy of the title policy has been provided. Mrs. Adams added she had reviewed "schedule B" of the policy and according to the title company, there are no easements nor did she find anything.

Applicant complies.

Item #40 - show location and dimensions of each new lot and existing structures and wooded areas. No new construction is proposed at this time. At the time of building the applicant agrees to meet the required setbacks and the site triangles will be maintained for driveway openings.

Conditional waiver recommended.

Item #49 - location of all existing tree masses indicating general sizes and species. No construction is proposed at this time but the applicant indicates that the new dwelling and new septic disposal field will require the removal of trees. The applicant has provided a plan showing the proposed limits of disturbance which would be limited to the areas necessary for the dwelling, the septic field and driveway and agrees this would be a condition of any approval.

Conditional waiver recommended.

Item #50 - Tree protection plan. No construction is proposed at this time.

Waiver is recommended.

Mrs. Adams added, if the application is approved, deed notification will be required regarding tree protection, as to the limits of what could be cleared on the site.

Item #57 - grading plan showing the existing and proposed spot elevations. No construction is proposed at this time. A grading plan is required before the issuance of building permits.

Waiver is recommended.

Item #75 - Utility plan. Not currently proposing any improvements at this time. The utility information will be required prior to the issuance of any building permits.

Waiver is recommended.

Board Engineer referred to his review letter of May 6, 2011 and added:

checklist item # 13 – metes and bounds descriptions. Not all were included and revisions are needed.

Road easement on remainder lot 26.02 must be submitted. Also course #6 for lot 26.02 does not agree with the submitted plan and neither does the area calculation.

Conditional waiver.

Item #19 – proposed block/lot numbers approved by tax assessor. Applicant must provide verification from the tax assessor that the proposed lot numbers are approved.

Conditional waiver.

Item #20 – property owners within 200 feet as disclosed by the most recent tax records.

Mr. Gaskill mentioned tax maps indicate a drainage easement between lot 26.01 & lot 25. It is an item that could be dealt with at the time of grading plan approval. For the record, Mrs. Holmes provided a copy of the tax map that showed the easement.

Informational waiver.

Chairman Yovnello moved to grant the following waivers as recommended by the Board Planner & Engineer for checklist item numbers 8, 17, 40, 49, 50, 57, 75, 13, 19, and 20 thereby deeming the application "complete." Seconded by Mrs. White.

Roll Call:

In favor: Goss, Barbaro, McCreery, Nicholson, Shoultz, Swanson, White, Yovnello, Pearson

Against: None ***Abstain:*** None ***9-0-0`***

Public Hearing:

- Harry & Serena Holmes, Minor subdivision with variances, block 56, lot 26.02, Aura Road

Mr. Holmes testified he would like to make one new lot. There is an existing house on the lot and to make the new lot he tried to conform as much as possible with current zoning requirements. Mr. Holmes does not plan to build on the lot right now.

Chairman Yovnello added 3 variances are being requested, lot size, minimum width at building and front yard setback for an existing porch on lot 26.02. Mr. Holmes must provide testimony to justify the requested variances, providing the positive and negative criteria.

Mrs. Bruder explained the applicant proposes to subdivide an existing lot of 2.78 acres to create two lots, one lot consisting of 1.40 acres which contains the existing dwelling and one new lot consisting of 1.38 acres which would be for future construction of a single family dwelling. The required lot size in this area is 2 acres.

Mrs. Holmes testified the existing lots on Aura Road are less than 2 acres in size and the new lots would be consistent with what is already in the area. Mrs. Bruder added across the street is a portion of the Silvergate project; phase III, which consists of 164 units that will be on lots smaller than an acre.

Chairman Yovenello asked the applicant to explain what exists on either side of the parcel. Mr. Holmes explained there is a 2 acre vacant wooded lot on one side and a church camp with several building (Camp Aura) on the other. Mr. & Mrs. Holmes have contacted both adjacent properties to purchase additional property. The Pastor of the camp may be interested in selling them 9 feet of camp property.

Mrs. Adams commented that one of the dilemmas is that the applicants are taking a conforming lot and creating 2 non-conforming lots. The board needs to have testimony placed on the record as to what hardship there is or other testimony to support the legal standards to permit the variances for lot area.

Mrs. Bruder further explained for a C-1 variance, or the hardship variance, the applicant must demonstrate that the strict application of the zoning regulation, the 80,000 square foot lot minimum, creates a hardship in some way or some exceptional practical difficulties by reason of the exceptional shape of the property, exceptional topographic conditions uniquely affecting the property, or the structures lawfully existing upon the property. Economic conditions are not a hardship on the land. She added, it didn't seem that a hardship applied in this case, and the alternative type of variance is a C (2) variance.

For a C(2) variance, the applicant must show that the proposed variance advances the purposes of the municipal land use law and that the benefits of the deviation would substantially outweigh any detriments and confirm that the proposal would not substantially impair the intent of the Master Plan or zoning ordinance. The applicant should explain how their proposal to deviate from the requirements would not undermine or impair the requirements that are in place.

In regard to the positive criteria, Mrs. Holmes mentioned the proposed lot sizes would be consistent with the existing lots in the neighborhood. Testimony is needed in terms of the negative criteria.

Mrs. Holmes responded it was their intent to make the proposal consistent with what already exists in the neighborhood. A dwelling on an acre and a half is a significant amount of property for anyone to take care and the parcel is next to a camp that has several buildings on it.

Mrs. Bruder added that when a zoning district is applied to an area, the circumstances affecting every individual property isn't necessarily taken into consideration. In this case, there is an area in the "R" zone where there is an existing development pattern that probably preceded the RE zoning district standards. Being located next to a camp with several buildings is unique in terms of a specific location.

Mrs. Holmes testified they had met with the Pastor of the Camp and that he was willing to support the subdivision in regard to selling them 9 feet of the camp property. Mrs. Bruder added that would eliminate the frontage variance, but not the lot size variance and would most likely create variances for the camp regarding building setbacks. So it doesn't really help.

The same would be true for the vacant wooded lot next to the existing dwelling.

To purchase additional property would make the conforming wooded lot, undersized. Again, not solving anything.

Mrs. Bruder continued her review. The applicant did provide an individual sewage disposal system feasibility study demonstrating soil suitability to construct a septic system on the new lot and also met county representatives on the site to perform soil tests and have provided the soil log descriptions along with the concept plan of how the system would be constructed. A letter of Interpretation, Footprint of Disturbance, from the NJDEP was obtained confirming if anything was built in this area it would not impact wetlands.

Mr. Holmes testified they reside on Whig Lane Rd and the house on Aura Road is a rental. They intend to build a larger house for their family on the new lot, if the subdivision is approved, and sell the rental property.

Mr. Nicholson moved to open to the public, Seconded by Mr. Swanson. With all members in favor, the motion was carried.

Ted Kapuscinski, Willingboro, NJ

Treasurer for Aura Holiness Camp. Mr. Kapuscinski requested that should the subdivision be approved, the new lot owner be made aware they are living next to an active camp. There will be light & noise associated with camp activity, especially in the summer.

Mrs. Bruder added that township ordinance 96-47 requires a buffer between incompatible uses. She recommended a 25 foot buffer that includes evergreen landscaping along the property line if approved.

Mrs. Adams added a notice about the camp activities and a no clearing of the buffer notice would be required in the deed.

Further, Mr. Kapuscinski made the board aware that the camp, under its constitution, is not permitted to sell any of its property unless it's to another non-profit and the Pastor wasn't aware of this when he spoke with Mr. & Mrs. Holmes.

Mr. Pearson moved to close to the public, seconded by Mr. Shoultz with all members in favor, the motion was carried.

Mr. Gaskill gave a brief summary of the existing lots in the area and commented that the proposed lots would not be out of character for the neighborhood; however the applicant is still required to demonstrate that the lots would not be a detriment to the master plan.

Mayor Barbaro inquired whether the lot in that area had changed in the past 10 years or so.

Mrs. Bruder responded that there had been several master plan changes between the years 2002-2006. Mr. Holmes purchased the property in 2006. No one had a definite answer of what the lot size requirements were at that time.

Mrs. White commented the lot currently is at the required size. The applicants want to subdivide and create 2 undersized lots. The board needs to hear testimony that indicates the land has some kind of shape or difficulty that is not practical or some kind of hardship, in order to make this change.

Chairman added the applicant and planner have given some testimony toward the justification of a C2 variance, but not enough to make a positive recommendation for variance relief. Mr. Swanson added the lot is a conforming lot and the subdivision is creating two nonconforming lots. The subdivision is creating the hardship.

Mr. Pearson, commented it is difficult for applicants to prove their case without the assistance of an attorney or planner and perhaps they would like to ask for a continuance to get professional guidance. Mrs. Adams agreed, that as a courtesy to applicants that are struggling with the standards of proof, the board may offer the opportunity to take a continuance to seek additional help if the applicant thinks it would help them to make their case.

Mr. McCreery added that up to this point, he does not feel the applicants have met the burden of proof to justify variance relief.

The Chairman commented the board consensus so far is that the applicants have not provided testimony convincing enough to grant variances. Mrs. Adams explained there is a legal standard the board must abide by and sometimes that is technical. She added perhaps seeking the help of professionals may help, she can't say for sure, but the board is offering that courtesy if they would like to obtain counsel and continue their hearing to another meeting. Mrs. Adams explained they only get one chance to prove their case. If the application is denied, they cannot return to the board unless the application is changed substantially.

Mrs. Holmes stated she would like to obtain counsel and continue the hearing until the June 15, 2011 meeting and she agreed to further waive any time limits that may be imposed by statutes or a decision. Mrs. Adams announced the Holmes application would be continued to the June 15, 2011 meeting at 7:30 pm and no further public notice will be given.

➤ **General Public Portion**

Mr. Pearson moved to open to the public, Seconded by Mr. McCreery. With all members in favor, the motion was carried.

With no comment from the public, *Mr. Pearson moved to close to the public, seconded by Mr. Shoultz. With all members in favor, the motion was carried.*

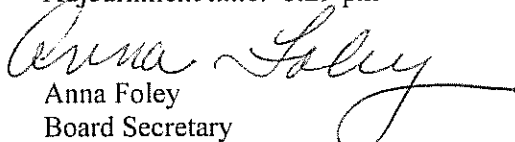
➤ **Correspondence:**

None

➤ **Adjournment:**

Mrs. White moved to adjourn, Seconded by Mr. Shoultz. With all members in favor, the motion was carried.

Adjournment time: 8:29 pm


Anna Foley
Board Secretary
Minutes, May 18, 2011